REVENTHAREN SUPPIAH v. MAJLIS PEGUAM MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
NOORIN BADARUDDIN J
[ORIGINATING SUMMONS NO: WA-17D-36-11-2019]
3 APRIL 2022

Abstract – *While disbarment may not generally be intended to be permanent, a petitioner applying to be reinstated and restored to the Roll of Advocates and Solicitors should demonstrate that there has been a change of character in him as would again make him a fit and proper person to resume practice, and further that he is now truly penitent and has made restitution; his failure to evince such rehabilitation, remorse or repentance, or that the legal profession may not suffer should he be reinstated, may cost him the petition, his profession and his practice.*

LEGAL PROFESSION: *Professional discipline – Reinstatement – Restoration to Roll – Application for – Petitioner breached fundamental foundation of relationship between lawyer and client – Whether grave misconduct – Whether being struck off from Roll for certain length of time sole criteria in considering restoration to Roll – Considerations of life expectancy and right to livelihood – Whether petitioner remorseful, penitent and rehabilitated – Whether petitioner fit and proper person to be reinstated – Whether requirements of s. 107 of Legal Profession Act 1976 fulfilled*

LEGAL PROFESSION: *Roll of advocates and solicitors – Restoration – Application for – Petitioner breached fundamental foundation of relationship between lawyer and client – Whether grave misconduct – Whether being struck off from Roll for certain length of time sole criteria in considering restoration to Roll – Considerations of life expectancy and right to livelihood – Whether petitioner remorseful, penitent and rehabilitated – Whether petitioner fit and proper person to be reinstated – Whether requirements of s. 107 of Legal Profession Act 1976 fulfilled*

This originating summons was filed by the petitioner seeking for, *inter alia*, an order for him to be reinstated and registered pursuant to s. 107 of the Legal Profession Act 1976 ('LPA') as an advocate and solicitor of the High Court of Malaya. The petitioner was admitted as an advocate and solicitor of the High Court in 1995 and was practising as an advocate and solicitor as a sole proprietor. On 8 October 2013, a complaint was lodged at the Advocates and Solicitors Disciplinary Board ('complaint') by the complainant against the petitioner for the failure to release the balance purchase price in the sum of RM247,500 ('balance purchase price') due and owing to one Syed Abdullah Syed Noh ('vendor') in respect of a sale and purchase agreement ('SPA'). The Disciplinary Board ('DB') informed the petitioner that it had considered the complaint pursuant to s. 100(2) of the LPA and that *prima facie*, the DB was of the view that there was merit in the

A complaint and proposed to hear the complaint pursuant to s. 100(6)(c) of the LPA. The petitioner was given notice to attend before the DB pursuant to s. 100(7) of the LPA. On 19 August 2014, the petitioner admitted to the misconduct and according to him, the matter was already settled in November 2013 and requested for forgiveness over his misconduct. The DB
B informed the petitioner that it had decided to strike off the petitioner from the Bar Council Registry. The petitioner submitted, *inter alia*, that he had taken all the necessary measures to ensure the complainant's matter was settled and no loss was suffered by the complainant, that he was truly penitent and regretful of his misconduct and that he should be allowed to see
C out the remaining years of his life as a person who had acknowledged his wrongdoing and was punished for it and be given a second chance for the remainder of his life. It was, however, the thrust of the respondent's submission that the petitioner's restoration application was not 'fair and reasonable' pursuant to s. 107(1) of the LPA and that the court ought to decline consideration of the application herein.

D **Held (dismissing originating summons):**

(1) The application of a person who has previously been struck off the Roll for improper conduct must necessarily be subjected to stricter scrutiny than that of a new entrant to the profession who had no adverse record.
E In assessing a restoration application, the court has a duty to ensure that those who are re-admitted to the profession of the law are persons on whose integrity and honour reliance may be placed. The court must also take into account the view of the respondent being the regulator of the profession. (para 14)

F **(2)** In expressing that he was ashamed for the misconduct that he had committed and that he had repented, the petitioner averred that 'despite minor issues of misconduct I have always been proper and tried hard to maintain and adhere to the high standard of integrity and trustworthiness expected of a lawyer.' At the very core of the matter, the petitioner's
G breach of his client's trust where trust is the principle of which the legal profession is founded upon, such averment did not reflect remorse on the part of the petitioner. By making such averment, the petitioner was attempting to justify and trivialise a serious misconduct. The undertaking given by the petitioner to the court could not be equated
H with the act of penitence or repentance when compared with such averment. It could not be gainsaid that the petitioner was clearly remorseful and his undertaking that he would not repeat the same mistake and would do his utmost best to preserve the integrity of the legal profession was therefore doubted. (para 15)

I **(3)** Although the petitioner's disbarment had been more than five years, there is nothing in law to state that the length of time that had lapsed is the sole criteria in considering restoration to the Roll. The petitioner

had breached the fundamental foundation of a relationship between a lawyer and his client which was founded upon trust. Relating to the complaint herein, it took the petitioner four months, eight days and some 17 months later from the date the balance purchase price was first paid into the petitioner's client's account before he made restitution to the complainant. Clearly, the restitution was an afterthought. The petitioner's misconduct was grave and having to scrutinise strictly such misconduct, this court could not consider to restore the petitioner to the Roll solely on the amount of years that had lapsed or only on the weight of testimonials provided. The focus had to be on whether the petitioner had demonstrated remorse, repentance and rehabilitation. (paras 17 & 18)

(4) As to the Certificates of Good Character provided by some senior members of the Malaysian Bar supporting the re-admission of the petitioner to the said Bar, this court could not disagree with the report by the respondent's secretary in that the contents of the modified Certificates of Good Character which was premised on forms produced pursuant to the LPA for fresh entrants to the legal profession, were only based on the referees' opinion of the petitioner without cogent basis or supportable evidence. The certificates did not point to specific particulars and/or pertinent evidence, *inter alia*, as to how the petitioner had rehabilitated or improved himself. There was no statement as to how the petitioner had rehabilitated himself to fulfil the requirements of s. 107 of the LPA or demonstrate penitence after the petitioner was struck off from the Roll. In fact, there was no statement as to how the petitioner had kept abreast with the latest developments of the law or applied himself in a manner that would be consistent with keeping abreast of the latest development of the law. (para 20)

(5) In finding that the petitioner had failed to show that he was remorseful, penitent and rehabilitated, the life expectancy of the petitioner was irrelevant, where administration of justice, public interest and the interest of the legal profession were concerned. Reinstatement is an exception rather than a rule. The petitioner had been disbarred for more than eight years now. Due to the gravity of the offence committed by the petitioner and his stand that what he had committed was a 'minor issue of misconduct'; it followed that he was not fully rehabilitated and would continue to pose a threat to society and would cast a pall of doubt over the integrity and reputation of the legal profession. The fact that the petitioner was 66 years old was not a paramount consideration but his worthiness and reliability for the future were supreme more so in the profession where the attribute of trustworthiness must be upheld in all circumstances. (para 24)

(6) In regard to the right to livelihood/restraint of trade, it must be emphasised of the well-entrenched principle that the ability to practice as an advocate and solicitor is not a right but a privilege afforded by the legislation, specifically the LPA. The striking off order issued by the DB was made pursuant to the provisions of the LPA. The petitioner had accepted the decision of the DB as he filed no appeal against the decision. It was therefore understood and accepted that the law and the process was lawful and proper. There was therefore no breach of art. 5 of the Federal Constitution as there was no issue of breach of the same article in the disciplinary proceeding. The right of the petitioner to practice as an advocate and solicitor was disposed of upon the issuance of the striking off order by the DB. He could not be re-admitted as of right as the discretion vested with the court to restore him to the Roll or otherwise. His right to lawful employment was therefore affected by the striking off order but his right to gainful employment was intact. (para 25)

(7) The present application was not about whether the petitioner had a right to practice law by way of gainful employment but instead whether he had fulfilled the requirements of the law *ie*, s. 107 of the LPA that would allow him to be restored to the Roll. The petitioner had failed to satisfy that he was a fit and proper person to be restored to the Roll. The misconduct of this nature was too prevalent and a strong message should be sent out to discourage potential offenders. (paras 26 & 27)

Case(s) referred to:

Awtar Singh Puran Singh v. Majlis Peguam Malaysia [2013] 1 MLJ 817 HC ***(refd)***

Chan Chow Wang v. Malaysian Bar [1986] 1 LNS 94 HC ***(refd)***

Kalpanath Singh Ram Raj Singh v. Law Society of Singapore [2009] 4 SLR 1018 ***(refd)***

Majlis Peguam Malaysia v. Krishnasamy Bhaktavatsalu [2020] 9 CLJ 613 CA ***(refd)***

Re Nirmal Singh Fauja Singh [2001] 3 SLR 608 ***(refd)***

Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA ***(refd)***

Teoh Hooi Leong v. Bar Council [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451 SC ***(refd)***

Legislation referred to:

Federal Constitution, art. 5

Legal Profession Act 1976, ss. 100(2), (6)(c), (7), 107(1)

For the petitioner - Allen Miranda & Suraiya Mohd Arif; M/s S Mogan & Co

For the respondent - Farez Jinnah, Nadhirah Amalina & Tay Chee Fu; M/s Farez Jinnah

Reported by Suhainah Wahiduddin

JUDGMENT

Noorin Badaruddin J:

[1] This originating summons is filed by the petitioner seeking for *inter alia* an order for him to be reinstated and registered pursuant to s. 107 of the Legal Profession Act 1976 ("LPA") as an advocate and solicitor of the High Court of Malaya.

Background Facts

[2] The petitioner was admitted as an advocate and solicitor of the High Court of Malaya on 9 February 1995. He was practising as an advocate and solicitor under the firm name Messrs. Reventharen & Associates as a sole proprietor.

[3] On 8 October 2013, a complaint was lodged at the Advocates and Solicitors Disciplinary Board ("the complaint") by one V. Santha Devi a/p S. Velusamy ("the complainant/the purchaser") against the petitioner for failure to release the balance purchase price in the sum of RM247,500 ("the balance purchase price") due and owing to one Syed Abdullah bin Syed Noh ("the vendor") in respect of a sale and purchase agreement dated 10 July 2012 ("the SPA").

[4] On 24 December 2013, the petitioner received a letter from the Disciplinary Board ("DB") together with a record of complaint requesting for a written explanation from the petitioner within 14 days regarding the complaint.

[5] *Vide* letter 9 February 2014, the DB informed the petitioner that it had considered the complaint pursuant to s. 100(2) LPA and that *prima facie*, the DB was of the view that there was merit in the complaint and proposed to hear the complaint pursuant to s. 100(6)(c) LPA. The petitioner was given notice to attend before the DB pursuant to s. 100(7) LPA. The petitioner was advised to submit any written explanation if any.

[6] *Vide* letter dated 19 August 2014, the petitioner admitted to the misconduct. According to the petitioner the matter was already settled in November 2013 and requested for forgiveness over his misconduct.

[7] *Vide* letter dated 28 August 2014, the DB informed the petitioner that it had decided to strike off the petitioner from the Bar Council Registry.

Summary Of The Petitioner's Submissions

[8] Summarily the petitioner submits that:

(i) he has all the while admitted to his misconduct and did not appeal against the DB's decision;

(ii) he took all the necessary measures to ensure the complainant's matter was settled and no loss was suffered by the complainant;

(iii) after being unemployed and unable to secure any gainful employment due to his age and having to rely on savings and support from his family members, from August 2016 to July 2017, he assisted his friend in establishing and running a college named Kolej IEWM and was appointed as the Chief Operating Officer which was a temporary position where he left the college after it became fully operational;

(iv) he had obtained and provided testimonials and certificates of good conduct from senior members of the Bar and public persons known to him to confirm his past misconduct, regret and their support of his reinstatement to the Roll;

(v) he is truly penitent and regretful of his misconduct;

(vi) he should be allowed to see out of his remaining years of his life as a person who had acknowledged his wrong doing and punished for it and be given a second chance for the remainder of his life.

Summary Of The Respondent's Contentions

[9] It is the thrust of the respondent's submission that the petitioner's restoration application is not "fair and reasonable" pursuant to s. 107(1) of the LPA and that the court ought to decline consideration of the application herein.

Findings

[10] In principle, with public interest and public policy considerations entrenched in s. 107 of the LPA, the petitioner has to establish that he is a fit and proper person in order to be restored to the Roll. Section 107 of the LPA states:

> The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off, the Roll.

[11] In the Supreme Court case of *Teoh Hooi Leong v. Bar Council, Malaysia* [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451; [1991] 2 MLJ 190, it was held that:

> The word 'fair' must necessarily mean that the decision must be fair firstly to the members of the public with whom the applicant will be renewing the professional relations once re-admitted because the law seems to protect not only the profession but also the public from errant lawyers.

[12] In the same case, the Supreme Court further stated that:

> The word 'fair' also requires the decision must be fair to the court itself because when re-admitted the appellant will be an officer of the court.

[13] This court is mindful of the principle that disbarment is not necessarily intended to be permanent. However, a heavy burden lay upon the petitioner to demonstrate that there is a change of character to make him a fit and proper person to resume practice as an advocate and solicitor and that he is truly penitent and he has made restitution (see *Chan Chow Wang v. Malaysian Bar* [1986] 1 LNS 94; [1986] 2 MLJ 159). In addition, the petitioner has to satisfy the court that from the time he was struck out from the Roll to the date he filed his restoration application, he has learnt his

lesson and embodied the values of the legal profession and the expectations demanded of it by the general public and more importantly, public interest considerations.

[14] It must be borne in mind that the application of a person who has previously been struck off the Roll for improper conduct must necessarily be subjected to stricter scrutiny than that of a new entrant to the profession who has no adverse record (*Awtar Singh Puran Singh v. Majlis Peguam Malaysia* [2013] 1 MLJ 817). In assessing a restoration application, the court has a duty to ensure that those who are re-admitted to the profession of the law are persons on whose integrity and honour reliance may be placed. The court must also take into account the views of the respondent being the regulator of the profession.

[15] In the instant matter, in expressing that he is ashamed for the misconduct that he has committed and that he has repented, the petitioner in his supporting affidavit avers that "despite minor issues of misconduct I have always been proper and tried hard to maintain and adhere to the high standard of integrity and trustworthiness expected of a lawyer." This court finds that at the very core of the matter, *ie*, the petitioner's breach of his client's trust where trust is the principle of which the legal profession is founded upon, such averment does not reflect remorse on the part of the petitioner. By making such averment, it is of the considered view that the petitioner is attempting to justify and trivialise a serious misconduct. The undertaking given by the petitioner to the court cannot be equated with the act of penitence or repentance when compared with such averment. It cannot be gainsaid that the petitioner is clearly remorseful and his undertaking that he will not repeat the same mistake and will do his utmost best to preserve the integrity of the legal profession is therefore doubted.

[16] The respondent has divulged and this court takes cognisance of the fact that apart from the striking off, there are six complaints lodged against the petitioner involving gross disregard of client's interest, unbefitting conduct and monetary dishonesty. These complaints are either kept in abeyance, reprimand, fine or withdrawn. According to the report by the respondent's Secretary, in the event of the petitioner's restoration to the Roll, one of the complaints (Complaint Reference DB14 9542) will re-activate. It is of the considered view that the pending disciplinary complaint against the petitioner is relevant. There is therefore a pre-existing and/or fresh complaint after the striking off that has been held in abeyance against the petitioner. The complaints demonstrate the unbefitting conduct of the petitioner as an advocate and solicitor. It remains a question and grave concern whether the petitioner would not repeat the misconduct.

[17] Although it is true that the petitioner's disbarment period has been more than five years, there is nothing in law to state that the length of time that has lapsed is the sole criteria in considering restoration to the Roll. In *Awtar Singh Puran Singh v. Majlis Peguam Malaysia* [2013] 1 MLJ 817, the court held as follows:

> it is clear from the case law that the mere fact that the appellant was struck off for five years and more does not give rise to an automatic right to be reinstated although it may be a factor to be considered ... What is more important to be considered here is for the court to focus on the intrinsic character of the applicant that is to say, whether the applicant has rehabilitated during the interim period ...

[18] In the instant matter, the petitioner had breached the fundamental foundation of relationship between a lawyer and his client which is founded upon trust. Relating to the complaint herein, it took the petitioner four months and eight days and some 17 months later from the date the balance purchase price was first paid into the petitioner's clients' account before he made restitution to the complainant. Clearly, the restitution was an afterthought. The petitioner's misconduct was grave and having to scrutinise strictly such misconduct, this court cannot consider to restore the petitioner to the Roll solely on the amount of years that had lapsed or only on the weight of testimonials provided. The focus has to be on whether the petitioner has demonstrated remorse, repentance and rehabilitation.

[19] In *Re Nirmal Singh s/o Fauja Singh* [2001] 3 SLR 608, LP Thean JA (as he then was) delivered the court's *dicta* as follows:

> In the final analysis, the question was really whether or not; on all the materials available before the court, the applicant could be said to be one who was fit to have his name restored on the roll. The court must be every bit as jealous of the honour of those admitted to the Singapore legal profession as a man is of his own reputation, for the integrity of the profession is dependant wholly on the character and virtue of its members. At the same time, we must be conscious of the ever-compelling need to protect the public from errant lawyers and the serious harm which such lawyers could inflict on the public and the reputation of the legal profession.

[20] As to the Certificates of Good Character from Kalearasu a/l K. Veloo, Datuk Watson Peter and Ragumaren a/l N Gopal, Yusoff Izzudin bin Md Ismail and Dave Vasoodaven supporting the re-admission of the petitioner to the Malaysian Bar, this court cannot disagree with the report by the respondent's Secretary in that the contents of the modified Certificates of Good Character which was premised on forms produced pursuant to the LPA for fresh entrants to the legal profession, are only based on the referees' opinion of the petitioner without cogent basis or supportable evidence. The

certificates do not point to specific particulars and or pertinent evidence, *inter alia*, as to how the petitioner has rehabilitated or improved himself. It is more perplexing when one of the referees make reference to the fact that he has known the petitioner to be responsible and hardworking during a period of more than 20 years which includes the period of the misconduct committed by the petitioner. There is no statement as to how the petitioner has rehabilitated himself to fulfil the requirements of s. 107 LPA or demonstrate penitence after the petitioner was struck off from the Roll. In fact, there is no statement as to how the petitioner has kept abreast with the latest developments of the law or applied himself in a manner that would be consistent with keeping abreast of the latest development of the law.

[21] It must be noted that there are other contentions submitted on behalf of the respondent. One of the contentions is the disclosure that the present matter is not the first restoration application filed by the petitioner and that in both the applications *ie*, the first and the present applications, the petitioner had wilfully caused non-disclosure of all material documents. However, this court finds that whatever that had transpired had been dealt with by the DB resulting to the striking off of the petitioner. It is therefore unwarranted and unfair to attempt to revisit the decision of the DB.

[22] However, two issues deserve to be considered herein *ie*, the life expectancy of the petitioner and his right to livelihood/restraint of trade.

[23] In regard to the life expectancy issue, it is submitted that since the petitioner is 66 years old, he should be allowed to see out the remaining years of his life and be given a second chance. The petitioner cited the case of *Majlis Peguam Malaysia v. Krishnasamy Bhaktavatsalu* [2020] 9 CLJ 613; [2020] 12 MLJ 438 where the Court of Appeal was of the view that the respondent of 70 years old therein should be given the opportunity to serve the public in the profession that he had striven hard to qualify for and that he was in the last lap of his life wanting to return and contribute. The petitioner attached an extract from the official portal of the Department of Statistic Malaysia entitled "*Abridged Life Tables, 2018-2020*". It is submitted that based on the extract, a person who has reached the age of 60 is expected to live until the age of 78.4 years old which means that the petitioner is expected to live another 12.4 years. It is further submitted that the petitioner should be allowed to see out his remaining years of his life as a person who had acknowledged his wrongdoing, was punished for it and given the second chance for the remainder of his life.

[24] In finding that the petitioner has failed to show that he is remorseful, penitent and rehabilitated, the life expectancy of the petitioner is irrelevant where administration of justice, public interest and the interest of the legal profession are concerned. It must be borne in mind that reinstatement is an exception rather than a rule. The petitioner has been disbarred for more than

eight years now. Due to the gravity of the offence committed by the petitioner and his stand that what he had committed was 'minor issue of misconduct', it follows that he is not fully rehabilitated and will continue to pose a threat to society and will cast a pall of doubt over the integrity and reputation of the legal profession (see *Kalpanath Singh s/o Ram Raj Singh v. Law Society of Singapore* [2009] 4 SLR 1018). The fact that the petitioner is 66 years old is not a paramount consideration but his worthiness and reliability for the future are supreme more so in the profession where the attribute of trustworthiness must be upheld in all circumstances.

[25] In regard to the right to livelihood/restraint of trade, it must be emphasised of the well-entrenched principle that the ability to practice as an advocate and solicitor is not a right but a privilege afforded by the legislation specifically the LPA. Accordingly, when art. 5 of the Federal Constitution stipulates that "No person shall be deprived of his life or personal liberty save in accordance with law" it must be readily understood that the liberty is not absolute. The term law encompasses both substantive and procedural law established under the enacted law (see *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771; [1996] 1 MLJ 261). The striking off order issued by the DB was made pursuant to the provisions of the LPA. The petitioner had accepted the decision of the DB as he filed no appeal against the decision. It is therefore understood and accepted that the law and the process was lawful and proper. There is therefore no breach of art. 5 of the Federal Constitution as there was no issue of breach of the same article in the disciplinary proceeding. The right of the petitioner to practice as an advocate and solicitor was disposed of upon the issuance of the striking off order by the DB. He cannot be re-admitted as of right as the discretion vests with the court to restore him to the Roll or otherwise. His right to lawful employment is therefore affected by the striking off order but his right to gainful employment is intact.

[26] The present application is not about whether the petitioner has a right to practice law by way of gainful employment but instead whether he has fulfilled the requirements of the law *ie*, s. 107 LPA that would allow him to be restored to the Roll.

Conclusion

[27] Premised on the above, this court is of the view that the petitioner has failed to satisfy that he is a fit and proper person to be restored to the Roll. The misconduct of this nature is too prevalent and a strong message should be sent out to discourage potential offenders. In the case of *Teoh Hooi Leong v. Bar Council* [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451; [1991] 2 MLJ 190, Hashim Yeop Sani CJ (Malaya) (as he then was) had stated:

The word 'fair' at Section 107(1) of the LPA must necessarily mean that the decision must be fair firstly to the members of the public with whom the applicant will be renewing professional relations once re-admitted because the law seems to protect not only professional but also the public from errant lawyers.

[28] The legal profession is constantly on guard to maintain and serve the trust of the people. While disbarment is not intended to be permanent, this court finds that the petitioner fails to show that he is remorseful, repentant and rehabilitated and that he is a fit and proper person to be restored to the Roll. The petitioner fails to satisfy that his restoration is of benefit to the public interest and failed to overcome the strict hurdle of the public's regard, *ie*, that the legal profession would not suffer should he be reinstated.

[29] Enclosure 1 was therefore dismissed.